

Applicants acknowledge and appreciate the Examiner's indication of allowable subject matter in claims 3-8, 10, 15-17, 21 and 24-26. For the reasons that follow, it is believed that all claims are now in condition for allowance.

In view of the preceding indication of allowable subject matter, independent claim 3 and dependent claims 4, 5, and 24 are in allowable form. In addition, claim 1 has been amended to incorporate the recitations of claim 21 (which was cancelled), claim 9 has been amended to incorporate the recitations of claim 26, and claim 13 has been amended to incorporate the recitations of claim 16 (which also was cancelled). Claim 17 was amended to depend from claim 13. Thus, independent claims 1, 9 and 13, along with dependent claims 6, 10-12, 14, 17, 19, and 20 are also now in condition for allowance.

Furthermore, claims 7 and 15 were written in independent form, and the ratio recited in claim 15 was amended to the range disclosed on page 7 of the application. The dependencies of claims 8, 22, 25 and 26 were amended to refer to claim 7 or 15. Also, new claims 27 and 28 depend from claim 15, while new claim 29 incorporates the features of claims 7 and 9. Therefore, claims 7, 8, 15, 22, and 25-29 are also believed to be in condition for allowance. Accordingly, all rejections of these claims have been overcome and should be withdrawn.

The only claims that remain that were not yet indicated as being allowable by the Examiner are claims 2 and 23. Claim 23 was rejected under 35 U.S.C. § 112, second paragraph, but it is believed that this rejection was intended to be made to claim 25. The dependency of claim 25 was changed to overcome this rejection, and it is respectfully submitted that the features of claim 23 properly depend from claim 2, the claim from which claim 23 depends. Accordingly, claims 23 and 25 are in compliance with 35 U.S.C. § 112.

The remaining claim, claim 2, was rejected under 35 U.S.C. § 102(b) as being anticipated by Herzing (4,464,411) for the reasons set forth on page 4 of the Office Action. In response, claim 2 has been amended to recite that emulsifier component comprises a monoglyceride, a diglyceride, a sorbitan ester or a sugar ester.

Herzing is directed to a confectionary coatings containing polyglycerol ester emulsifiers (PGPRs) for the purpose of improving gloss of the compound coatings having melting points between 52 and 57°C and HLB values between 7.2 and 13 and in a concentration of 1 or 2 percent by weight of the confectionery product. These PGPRs are excluded from claim 2, and there is no teaching, disclosure or motivation in Herzing to utilize

the presently claimed emulsifiers in place of the PGPRs of Herzing. Accordingly, Herzing does not teach all of the elements of Applicants' invention as claimed in independent claim 2, and the 102(b) rejection based on Herzing should be withdrawn.


In view of the comments above, Applicants' respectfully request that all rejections have been overcome and should be removed so that the claims can be promptly allowed. If any issues remain in connection with the previous rejections, the Examiner is invited to telephone the undersigned to discuss and resolve them.

Enclosed herewith is a fee transmittal sheet for the new and amended claims. Applicant does not believe any other fees are due herewith, but should any additional fees be required, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Date: _____

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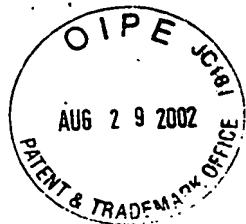
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APPENDIX A - MARKED COPY OF AMENDED CLAIMS



Please amend claims 1-3, 7-9, 13, 15, 17, 22, 25 and 26 as follows:

1. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

2. (Amended) A chocolate composition comprising an emulsifier component comprising a monoglyceride, a diglyceride, a sorbitan ester or a sugar ester, the emulsifier having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component is present in an amount of about 2.2 to 6 percent by weight of the confectionery product

3. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, or fully hydrogenated [or] monoglycerides.

7. (Amended) A [The] chocolate composition [of claim 1] comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 36°C. ^{96.8}

8. (Amended) The chocolate composition of claim [1] 7, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 45°C.

9. (Amended) A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;
adding to the chocolate an emulsifier component comprising at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters, the emulsifier component having a melting point from about 50 to 90°C and hydrophilic/lipophilic balance value of about 2 to 10;
mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;
warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and
allowing the mixture to cool and set to form a stable chocolate composition.

13. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil, and wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of a monoglyceride, sorbitan ester, mono- or diglycerides of a vegetable oil, a partially hydrogenated monoglyceride, a fully hydrogenated monoglyceride, or sugar ester.

15. (Amended) A [The] food product [of claim 13] comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil, and wherein the ratio of liquid oil to emulsifier component is about 10:2 to about 10:05

17. (Amended) The food product of claim [16] 13, wherein the emulsifier component comprises a monoglyceride having a carbon side chain of at least 16 carbons.

22. (Amended) The chocolate composition of claim [2] 7, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

25. (Amended) The chocolate composition of claim [3] 7, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

26. (Amended) The chocolate composition of claim [9] 15, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.



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APPENDIX B - PRESENTLY PENDING CLAIMS

1. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

2. (Amended) A chocolate composition comprising an emulsifier component comprising a monoglyceride, a diglyceride, a sorbitan ester or a sugar ester, the emulsifier having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component is present in an amount of about 2.2 to 6 percent by weight of the confectionery product

3. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, or fully hydrogenated monoglycerides.

4. (Amended) The chocolate composition of claim 3, wherein the emulsifier component is a monoglyceride having a carbon side chain of at least 16 carbons.

5. The chocolate composition of claim 4, wherein the emulsifier component comprises a monoglyceride having a carbon side chain at least 20 carbons long.

6. The chocolate composition of claim 1, wherein the emulsifier component comprises a monoglyceride having a melting point of about 67°C obtained by distilling partially hydrolyzed vegetable oil.

7. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 36°C.

8. (Amended) The chocolate composition of claim 7, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 45°C.

9. (Amended) A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;

adding to the chocolate an emulsifier component comprising at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters, the emulsifier component having a melting point from about 50 to 90°C and hydrophilic/lipophilic balance value of about 2 to 10;

mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;

warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and

allowing the mixture to cool and set to form a stable chocolate composition.

10. The method of claim 9, further comprising depositing the mixture into a mold at a temperature sufficient to prevent the emulsifier component from crystallizing, and removing the mixture from the mold after the mixture cools.

11. The method of claim 9, wherein the emulsifier component is added in an amount from about 1 to 6 percent by weight of the chocolate composition.

12. The method of claim 9, wherein the mixing uniformly distributes the emulsifier component throughout the chocolate.

13. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil, and wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of a monoglyceride, sorbitan ester, mono- or diglycerides of a vegetable oil, a partially hydrogenated monoglyceride, a fully hydrogenated monoglyceride, or sugar ester.

14. The food product of claim 13, wherein the liquid oil comprises palm oil, palm kernel oil, coconut oil, cocoa butter, babassu oil, milk fat, soybean oil, corn oil, canola oil, rapeseed oil, sesame oil, sunflower oil, safflower oil, peanut oil, oils resulting from the fractionation or hydrogenation thereof, and mixtures thereof.

15. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil, and wherein the ratio of liquid oil to emulsifier component is about 10:2 to about 10:05

16. (Cancelled)

17. (Amended) The food product of claim 13, wherein the emulsifier component comprises a monoglyceride having a carbon side chain of at least 16 carbons.

18. (Cancelled)

19. The food product of claim 13, wherein the food product comprises at least one of a creamer, dough, bouillon base, confectionery coating or center, or ice cream.

20. (New) The chocolate composition of claim 1, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

21. (Cancelled)

22. (Amended) The chocolate composition of claim 7, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

23. (New) The chocolate composition of claim 2, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

24. (New) The chocolate composition of claim 3, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

25. (Amended) The chocolate composition of claim 7, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

26. (Amended) The chocolate composition of claim 15, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

27. (New) The food product of claim 13, wherein the liquid oil comprises palm oil, palm kernel oil, coconut oil, cocoa butter, babassu oil, milk fat, soybean oil, corn oil, canola oil, rapeseed oil, sesame oil, sunflower oil, safflower oil, peanut oil, oils resulting from the fractionation or hydrogenation thereof, and mixtures thereof.

28. (New) The food product of claim 13, wherein the food product comprises at least one of a creamer, dough, bouillon base, confectionery coating or center, or ice cream.

29. (New) A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;

adding to the chocolate an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10;

mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;

warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and

allowing the mixture to cool and set to form a stable chocolate composition; wherein the stable chocolate composition substantially maintains its structure up to a temperature of at least about 36°C.